

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSEANNA K. KELLY and DEPARTMENT OF DEFENSE,
DEFENSE MAPPING AGENCY, Washington, D.C.

*Docket No. 99-2024; Submitted on the Record;
Issued January 16, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's right wrist surgery is causally related to her April 16, 1992 employment injury.

On April 21, 1992 appellant, then a 38-year-old cartographer, filed a claim for "pain in right arm, radiating to wrist and hand from the elbow" related to an injury on April 16, 1992 when an elevator door started to close and hit her right elbow. The Office of Workers' Compensation Programs accepted this claim for right elbow strain, lateral epicondylitis of the right elbow and right radial tunnel syndrome. Appellant received continuation of pay from April 28 to July 9, 1992, followed by compensation for temporary total disability until her return to work on September 8, 1992. Thereafter she missed intermittent time from work for physical therapy and doctors' appointments and received compensation for these periods.

On September 13, 1993 appellant underwent surgery on her right elbow, as authorized by the Office. She received compensation for temporary total disability from September 13, 1993 until she returned to her regular work on February 16, 1994. By telephone call on January 10, 1994, appellant requested authorization for surgery to her right wrist as recommended by her attending physician, Dr. Steven L. Friedman, a Board-certified orthopedic surgeon, in a February 23, 1994 report. By decision dated March 21, 1995, the Office denied authorization on the basis that the surgery was not related to appellant's April 16, 1992 employment injury.

On April 21, 1995 Dr. Friedman performed arthroscopic surgery on appellant's right wrist for a triangular fibrocartilage tear.

Appellant requested a hearing, which was held before an Office hearing representative on August 30, 1995. By decision dated November 13, 1995, an Office hearing representative found that the evidence failed to establish that appellant sustained the triangular fibrocartilage complex tear of the right wrist as a result of her April 16, 1992 employment injury. The Office hearing representative found that the opinion of Dr. Friedman supporting causal relation was "either

based on a wholly speculative history or is vague and not supported by specific medical rationale” and was not sufficient to outweigh or to create a conflict with the “comprehensive and thoroughly rationalized report” of Dr. John J. Tansey, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation.

By letter dated November 11, 1996, appellant requested reconsideration and submitted a deposition of Dr. Tansey taken on December 5, 1995. By decision dated February 10, 1997, the Office found that the additional evidence was not sufficient to warrant review of its prior decisions. Appellant appealed this decision to the Board. By motion dated June 26, 1998, the Director of the Office stated that the Office erred in refusing to reopen the case on its merits and requested that the Board set aside the Office’s February 10, 1997 decision and remand the case to the Office for further development and a merit reconsideration decision. By order dated July 8, 1998, the Board granted the Director’s motion.

On remand, the Office determined that there was a conflict of medical opinion on the question of whether the right wrist surgery appellant underwent on April 21, 1995 was causally related to her April 16, 1992 employment injury. To resolve this conflict, the Office, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,¹ referred appellant, the case record and a statement of accepted facts to Dr. Peter C. Innis, a Board-certified orthopedic surgeon. In a report dated March 4, 1999, he set forth appellant’s history, complaints and findings on physical examination. Dr. Innis concluded, “I see no way that the elevator injury could have torn [appellant’s] TFCC [triangular fibrocartilage complex] and I suspect that this was a degenerative tear due to other reasons besides the elevator accident.”

By decision dated March 17, 1999, the Office found: “In this particular case, the weight of the medical evidence lies with the opinion rendered by the impartial specialist, Dr. Peter Innis. In a well-rationalized report he indicated that claimant’s torn right triangular fibrocartilage on the ulnar side of the right wrist is not causally related to the employment injury.”

The Board finds that the case is not in posture for decision.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.² In the present case, there was a conflict of medical opinion between appellant’s attending physician, who supported causal relation and the Office’s referral physician, who negated causal relation.³ The Office properly referred the case to Dr. Innis, a Board-certified orthopedic surgeon who specializes in hand surgery, to resolve

¹ 5 U.S.C. § 8123(a) states in pertinent part “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”

² *James P. Roberts*, 31 ECAB 1010 (1980).

³ Two Office medical advisers also opined that the wrist condition was not causally related to appellant’s April 16, 1992 employment injury.

this conflict. Although he concluded that the torn cartilage in appellant's right wrist was not causally related to her April 16, 1992 employment injury, Dr. Innis did not offer any rationale or point to any particular findings to support this conclusion or his conclusion that it was instead a degenerative tear. The Board has held that in a situation where the Office secures an opinion from an impartial medical specialist and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.⁴ The case will be remanded to the Office for procurement of a supplemental report from Dr. Innis explaining why he believes that appellant did not sustain the torn fibrocartilage of her right wrist on April 16, 1992.

The decision of the Office of Workers' Compensation Programs dated March 17, 1999 is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision.

Dated, Washington, DC
January 16, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Harold Travis*, 30 ECAB 1071 (1979).